

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-18-227-SLP
)	
JOSEPH MALDONADO-PASSAGE,)	
)	
Defendant.)	

NOTICE PURSUANT RULE 609(b), FED.R.EVID.

Counsel for Joseph Maldonado-Passage, submit this written notice pursuant to Rule 609(b), Fed.R.Evid, of the intention to introduce evidence of prior felony convictions of potential government witnesses that fall outside the limitations of Rule 609(b), Fed.R.Evid.. Rule 609(b) provides:

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

If called, counsel for Mr. Maldonado-Passage intend to question Jeffrey Lee Lowe, Frank Allen Glover, Bruce Allen David, II, and Eric Cowie about the following felony convictions.

1. **Jeffrey Lee Lowe**

2007 - Mail Fraud, violation of 18 U.S.C. §1341, District of South Carolina; plead guilty to defrauding a “Gifts in Kind International” and “Citizens Opposed to Domestic Abuse,” two charitable organizations;

2. **Frank Allen Glover**

1985 - Assault and Battery High Aggravated Nature, a violation of Code of Laws of South Carolina (1976), Beaufort County, South Carolina;

3. **Bruce Allen David, II**

1999 - Forgery, a violation of Texas Penal Code §32.21, 43rd District Court, State Jail Felony, deferred sentence;

4. **Eric Cowie**

1990 - Burglary 2nd Degree, State of Michigan.

The government has had notice of the criminal history of these individuals as the criminal history reports were provided to counsel by the government. The interests of justice and the probative value of this evidence dictate Mr. Maldonado-Passage be allowed to introduce these convictions on cross-examination.¹ Crimes such as fraud and forgery involve dishonesty and false statements and are recognized by Rule 609(a)(2) as highly probative of credibility. A felony conviction alone is probative of credibility. Thus, while it is arguable

¹ A deferred judgment can be treated as a conviction under federal law and used for impeachment. *United States v. Turner*, 497 F.2d 406, 407 (10th Cir.1974).

aggravated assault and burglary do not implicate dishonesty or false statement, nonetheless the fact of a felony conviction is highly probative of credibility. Each of these potential witnesses ostensibly will provide direct evidence concerning essential elements of the offenses charged.

Counsel for Mr. Maldonado-Passage cannot envision what prejudicial effect the introduction of this evidence could have on these individuals or the government's case. Jeffrey Lowe, Allen Glover, Bruce David, and Eric Cowie are not facing a loss of liberty or any other detriment should these convictions come to light. The fact these individuals have been adjudicated guilty of felony offenses is highly probative of their credibility. The probative value of evidence affecting the issues in this case will outweigh any potential prejudicial effect. *See United States v. Lugo*, 170 F.3d 996, 1005 (10th Cir. 1999) (defendant's drug conviction admissible under Rule 609 because it was relevant to defendant's credibility and intent and the probative value outweighed any prejudicial effect). Mr. Maldonado-Passage submits evidence of these convictions should be admitted at trial.

Respectfully submitted,

s/ William P. Earley

WILLIAM P. EARLEY

Bar Number 11293

KYLE E. WACKENHEIM

Bar Number 30760

ASSISTANT FEDERAL PUBLIC DEFENDERS

SUITE 109, 215 DEAN A. MCGEE AVENUE

OKLAHOMA CITY, OKLAHOMA 73102

(405)609-5930 FAX (405) 609-5932

E-mail william.earley@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of March, 2019, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic filing to the following ECF registrants: Amanda Green and Charles Brown, Assistant United States Attorneys.

s/ William P. Earley
WILLIAM P. EARLEY